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**Paper for the House Committee Meeting
of the Legislative Council
on 11 February 2000**

**Legal Service Division Report on
Building Management (Amendment) Bill 2000**

Object of the Bill

The object of the Bill is to amend the Building Management Ordinance (Cap. 344) ("the Ordinance") to provide for-

- (a) specification of building management and maintenance standards for compliance by owners' corporations ("OCs");
- (b) mandatory management of buildings with serious management and maintenance problems;
- (c) simplifying the manner for owners of new buildings to convene meetings to appoint management committees; and
- (d) miscellaneous matters relating to insurance, auditing of OC's accounts, notice of owners' meeting and quorum at a meeting of OC.

LegCo Brief Reference

2. S/F(3) in HAB/CR/8/10/12 issued by the Home Affairs Bureau on 12 January 2000.

Date of First Reading

3. 26 January 2000.

Comments

4. Section 18(1) of the Ordinance provides for, inter alia, certain obligations of OCs in relation to the management and maintenance of a building's common parts but the Ordinance has not specified the standards of management and

maintenance. The Bill proposes to amend the Ordinance to empower the Secretary for Home Affairs ("the Authority") to prepare, revise and issue Codes of Practice ("the Codes") providing specific standards for OCs to discharge their building management and maintenance duties. A copy of the draft Code is at Annex B to the LegCo Brief. Under existing section 44(2) of the Ordinance, a failure on the part of any person to observe the Code does not render that person liable to criminal proceedings of any kind but any such failure may, in any proceedings whether civil or criminal including proceedings for an offence under the Ordinance, be relied upon as tending to establish or to negative any liability which is in question in those proceedings.

5. The Bill also proposes to amend the Ordinance to confer the Authority a power to order the management committee of the OC of a building with serious management and maintenance problems and without a manager, to employ a building management agent from a list specified by the Authority in the Gazette. If the management committee fails to comply with the Authority's order within the period specified without reasonable excuse, every member of the management committee will be guilty of an offence which, upon conviction, carries a fine at level 5 (\$50,000) and in the case of a continuing offence, carries a further daily fine of \$1,000 for each day during which the offence continues. If the building has no OC and is unlikely to form one, the Authority may apply to the Lands Tribunal which may order a meeting of owners to be convened to either appoint a management committee or a building management agent from the list specified by the Authority in the Gazette.

6. In the case of a building the deed of mutual covenant of which is executed by the parties to it after the commencement of section 3 of the Building Management (Amendment) Ordinance 2000 (upon enactment of the Bill), the Bill proposes to amend the Ordinance to simplify the manner for those owners to convene meetings to appoint management committees.

7. The Bill further proposes miscellaneous amendments to the Ordinance. It proposes to require OCs to take out third party insurance in respect of the building including the common parts. The requirements of the insurance (e.g. scope of coverage, minimum level of indemnity, qualifications of insurers) will be provided in a Regulation to be made by the CE in Council under the Ordinance. Other amendments include proposal to require an OC's accounts, except for an OC of a building which has less than 50 flats, be audited only by a qualified accountant; proposal to require the publication of the notice of an owners' general meeting convened to appoint the first management committee in one, instead of two, newspaper; and proposal that proxies appointed by owners are counted towards the quorum required for a meeting of an OC.

Public Consultation

8. According to paragraph 24 of the LegCo Brief the Administration consulted the Provisional District Boards ("PDB") or their committees in 1998. Other bodies, namely the Hong Kong Institute of Housing, Chartered Institute of Housing (Hong Kong Branch), Hong Kong Association of Property Management

Companies, Hong Kong Federation of Insurers and the Hong Kong Institute of Surveyors, were also consulted. They supported the proposed amendments in general.

9. The Hong Kong Society of Accountants ("HKSA") has provided a written submission on the Bill to the Legislative Council Secretariat. A copy of the submission is at the Annex. HKSA, which has been consulted by the Home Affairs Bureau on the proposals in the Bill, points out that its concerns about the audit reporting requirements and the audit threshold (50 flats or more) have not been addressed in the Bill. HKSA further proposes technical amendments to new section 27(1A) concerning audit reporting requirements. With the consent of HKSA, the Legislative Council Secretariat has forwarded HKSA's submission to the Administration for comments. But no reply has been received up to the time of reporting.

Consultation with the LegCo Panel

10. The Administration briefed the LegCo Panel on Home Affairs twice on 12 April and 29 June 1999. The meeting of the Panel on 29 June 1999 was also attended by the chairmen/members of the 18 PDBs. The Panel supported in principle the proposals in the Bill but some members of the Panel expressed concerns about the detailed implementation of certain proposals, for example, the mandatory formation of OCs in new buildings and mandatory insurance requirement.

Conclusion

11. The Bill contains important proposals on requiring OCs to comply with the Code, mandatory management of buildings with serious management and maintenance problems, and mandatory insurance in respect of the common parts of a building against third party risks. HKSA has expressed concerns about certain aspects of the Bill. We are still waiting for the Administration's reply to HKSA's submission. Although the Panel on Home Affairs supported the general principle of the proposals, some members of the Panel have expressed concerns about the detailed implementation of the proposals. Members are recommended to form a Bills Committee to study details of the proposals. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill.

Encl

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